

**State of Michigan  
Department of Treasury**

**TAXPAYER  
RIGHTS  
HANDBOOK**



**TAXPAYER RIGHTS HANDBOOK**  
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# INTRODUCTION

The Taxpayer Rights Handbook was developed to explain employee responses to the public, standards for tax audit activities, and to help taxpayers understand their rights and responsibilities; it does not take the place of the law. This Handbook is written as part of the provisions of Public Act (PA) 13 of 1993 and PA 14 of 1993. It has been updated to include the provisions of the Jobs Provider Bill of Rights.

## SECTION 1 – DEPARTMENT AUTHORITY/GUIDELINES

### TAXES AND FEES ADMINISTERED BY MICHIGAN DEPARTMENT OF TREASURY UNDER THE REVENUE ACT

The following chart lists taxes and fees administered by the Michigan Department of Treasury (Department). The taxpayer may expect a tax examination by a representative of the Department if he or she is liable for one or more of these taxes or fees.

<u>Tax/Fee</u>	<u>Legal Authority (Public Act, Year)</u>	<u>Tax/Fee</u>	<u>Legal Authority (Public Act, Year)</u>
Airport Parking	PA 248, 1987	Michigan Business Tax	PA 36, 2007
Aviation Fuel	PA 327, 1945	Michigan Underground Storage Tank Financial Assurance (MUSTFA) Act	PA 518, 1988
Cigarette - see Tobacco Products		Motor Carrier Fuel/ International Fuel Tax Agreement	PA 119, 1980
Commercial Mobile Radio Service	PA 80, 1999	Off Road Vehicle, Watercraft, and Snowmobile Fuel	PA 221, 1987
Diesel Motor Fuel	PA 150, 1927	Real Estate Transfer	PA 330, 1993
Environmental - see MUSTFA		Sales	PA 167, 1933
Estate (a)	PA 54, 1993	Severance of Oil and Natural Gas	PA 48, 1929
Farmland and Open Space Preservation Tax Credit	PA 116, 1974	Single Business (d)	PA 228, 1975
Gasoline	PA 150, 1927	State Convention Facility	PA 106, 1985
Gas and Oil Privilege Fee	PA 61, 1973	State Education	PA 331, 1993
Income	PA 281, 1967	Tobacco Products	PA 327, 1993
Income Tax Withholding	PA 281, 1967	Use	PA 94, 1937
Industrial/Commercial Facilities	PA 198, 1974	Utility Property	PA 282, 1905
Inheritance (b)	PA 54, 1993		
Insurance Company Retaliatory	PA 261, 1987		
Intangibles (c)	PA 30, 1939		
Liquefied Petroleum Gas	PA 150, 1927		

- (a) The Federal Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001 phased out the state tax credit allowed against the federal estate tax in 25 percent increments between 2002 and 2005. EGTRRA effectively ended Michigan's estate tax as of 1/1/2006.
- (b) For deaths before 10/1/1993 or generation-skipping transfers occurring after 12/31/1992 but before 10/1/1993.
- (c) Repealed per PA 5 of 1995 effective 1/1/1998.
- (d) Replaced by Michigan Business Tax per PA 36 of 2007 effective 1/1/2008.

## DISCLOSURE AND POWER OF ATTORNEY

Under the Internal Revenue Code and the Revenue Act, Department employees and anyone acting on behalf of the Department are required to protect the confidentiality of taxpayer information, including information from tax returns, account information, and filing records. Inappropriate or unauthorized disclosure is a felony punishable by fines and imprisonment and is grounds for immediate dismissal of the employee or representative of the Department making the unauthorized disclosure.

Disclosure may be made only to the taxpayer of record as indicated on the business registration *Registration for Michigan Taxes* (Form 518) and/or returns filed by a business or individual. A taxpayer may elect to authorize disclosure to other parties by completing *Power of Attorney Authorization* (Form 151), or its equivalent signed release, giving the Department specific permission to discuss his or her account with the person listed on form 151.

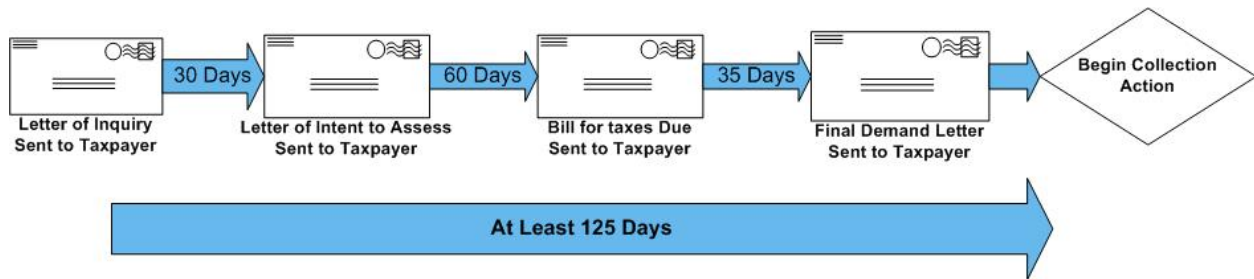
Taxpayers may limit Form 151 to specific time periods and for specific types of taxes and issues.

Taxpayers may request that an authorized representative listed on Form 151 receive copies of notices and/or correspondence sent to the taxpayer. Requests must be made in writing and directed to the appropriate taxing division or the Collection Division.

If the taxpayer is deceased, the decedent's representative must provide court documents naming him or her as authorized representative of the decedent and decedent's estate.

## TAX BILLING AND APPEALS PROCESS

### Notifying Taxpayer of Tax Liability



If the Department's review indicates the taxpayer may owe taxes, a LETTER OF INQUIRY will be sent to the taxpayer. The LETTER OF INQUIRY must be non-threatening and state the reason tax may be owed and request the taxpayer provide information supporting the return as filed by the taxpayer. A LETTER OF INQUIRY also explains how to communicate with the Department to resolve the issue. The taxpayer has 30 days from the time the LETTER OF INQUIRY is sent to resolve the deficiency before a NOTICE OF INTENT TO ASSESS is issued. The Department is not required to send a LETTER OF INQUIRY if the taxpayer files a return without paying the tax due or owes taxes determined by an audit.

The Department will send a LETTER OF INQUIRY when the return filed does not agree with the amounts shown on the return filed with the Internal Revenue Service. The letter will explain the specific item on the State return that does not agree with the federal return and give the taxpayer the opportunity to explain why the amount shown on the State return was different.

The Department also may send a LETTER OF INQUIRY where comparisons have been made to records of other State agencies and it appears that the proper tax returns have not been filed and paid. In this case, the letter will identify the records matched and give a description of the proposed taxes due, the type of tax, and the return period. The LETTER OF INQUIRY provides contact and payment information in the event the taxpayer has questions or wishes to make payment.

### **Billing Process**

The billing process begins when a tax liability has been determined for a specific period. If full payment of tax is not received by the due date, the Department will take the following steps:

1. Collection Division will send a NOTICE OF INTENT TO ASSESS to the taxpayer for the balance of taxes due. The NOTICE OF INTENT TO ASSESS includes:
  - A. The amount of tax owed
  - B. The reason for deficiency, **and**
  - C. A statement advising the taxpayer of the right to dispute the amount of tax owed by requesting an informal conference.

An informal conference may be requested within 60 days of the date of the NOTICE OF INTENT TO ASSESS. The request must be in writing and must state the amount in dispute and why the taxpayer believes the tax is not owed. (See page 4, "Appeals Process," for additional information.)

2. If the taxpayer does not pay the tax, present correcting information, or request an informal conference within 60 days of the date of the NOTICE OF INTENT TO ASSESS, the Collection Division will send a BILL FOR TAXES DUE (FINAL ASSESSMENT) to the taxpayer.

All or part of the FINAL ASSESSMENT may be appealed directly to the Tax Tribunal within 35 days of the date on the bill. See page 4, "Appeals Process," for more information. An appeal may also be made to Court of Claims (Ingham County Circuit Court) within 90 days if the BILL FOR TAXES DUE (FINAL ASSESSMENT) is paid in full.

Bills received from the Department should be reviewed to make sure they are correct. If a bill is incorrect, notify the Department right away to seek adjustment if appropriate.

To have a bill explained, contact the Department at the number listed in the top-right corner of the NOTICE OF INTENT TO ASSESS or the BILL FOR TAXES DUE (FINAL ASSESSMENT). Forward correspondence about original or amended returns, or questions about payments in response to the bills to:

Collection Division  
Michigan Department of Treasury  
P.O. Box 30168  
Lansing, MI 48909

If a balance due is unpaid upon the completion of the billing process, the Department will pursue active collection. See Section 4, "Collection Guidelines," for additional information on collection actions.

### **Payment Arrangements**

Taxpayers should make every effort to pay their bills in full as soon as possible to minimize penalty and interest. Taxpayers unable to make full payment, borrow the amount due, or who do not have sufficient disposable assets from which full payment could be made should pay as much as he or she can and immediately contact the Collection Division to request payment arrangements for the balance. The Collection Division may ask for a complete financial statement from the taxpayer to determine appropriate payment arrangements.

The application of payment under a payment agreement is at the sole discretion of the Department. Payments are applied to interest first, then to penalty, and finally to tax due. Refunds and/or other monies owed to the taxpayer by the State will be intercepted and applied to taxpayer debts.

Liens will be filed even when a taxpayer has made payment arrangements and is current with all payments. Liens are filed to protect the State's interest as a creditor.

Forward all payments to:

Collection Division  
Michigan Department of Treasury  
P.O. Box 30199  
Lansing, MI 48909

### **Appeals Process**

Taxpayers have the right to appeal any final determination made by the Department including a reduced or denied refund or credit forward, a NOTICE OF INTENT TO ASSESS, and a BILL FOR TAXES DUE (FINAL ASSESSMENT). The forum for the appeal and the time limit for requesting an appeal depend upon the type of final determination.

## Informal Conference

1. An informal conference with a Department hearing referee must be requested in writing within 60 days of receiving a notice of reduced or denied refund, a notice of reduced or denied credit forward, or a NOTICE OF INTENT TO ASSESS. Include in the request the amount of tax in dispute and why the tax is not owed. The portion of the tax bill that is not disputed must be paid.
  - A. A taxpayer who made a timely request for an informal conference may withdraw that request by filing written notice with the Department. Upon receipt of the withdrawal, the Department must issue a Decision and Order or Final Assessment where appropriate. The taxpayer may then exercise any appeal rights as provided under Section 22 of the Revenue Act to the Tax Tribunal or Court of Claims.
  - B. A taxpayer may convert a disputed assessment to a claim for refund by notifying the Department in writing during the course of an informal conference. The written notice must include payment of the contested amount. The informal conference continues and the Department must issue a Decision and Order regarding the claimed refund.
2. If an appeal to a NOTICE OF INTENT TO ASSESS is determined to be a frivolous protest or a desire by the taxpayer to delay or impede the administration of taxes, the taxpayer could be subject to a 25 percent penalty.
3. A hearing date and place is set that is convenient for all parties. The Department sends out a notice for informal hearing to the taxpayer stating the scope and nature of the subject of the informal conference. The taxpayer may bring an attorney or other representative to the hearing or authorize a representative to attend the hearing in place of the taxpayer. Form 151, or its equivalent, must be filed with the Department if a representative is to attend the hearing without the taxpayer. The taxpayer may record the hearing after giving the Department prior notice. The Department, likewise, may record the hearing with prior notice to the taxpayer.
4. The hearing referee makes a recommendation to the designated representative of the State Treasurer who makes a final decision and issues a Decision and Order.
5. As provided under Section 22 of the Revenue Act, the taxpayer may appeal the Decision and Order of the State Treasurer to either:
  - A. The Michigan Tax Tribunal within 35 days, which requires payment of the undisputed amount, **or**
  - B. The Court of Claims (Ingham County Circuit Court) within 90 days, which requires payment of the full amount of the assessment.

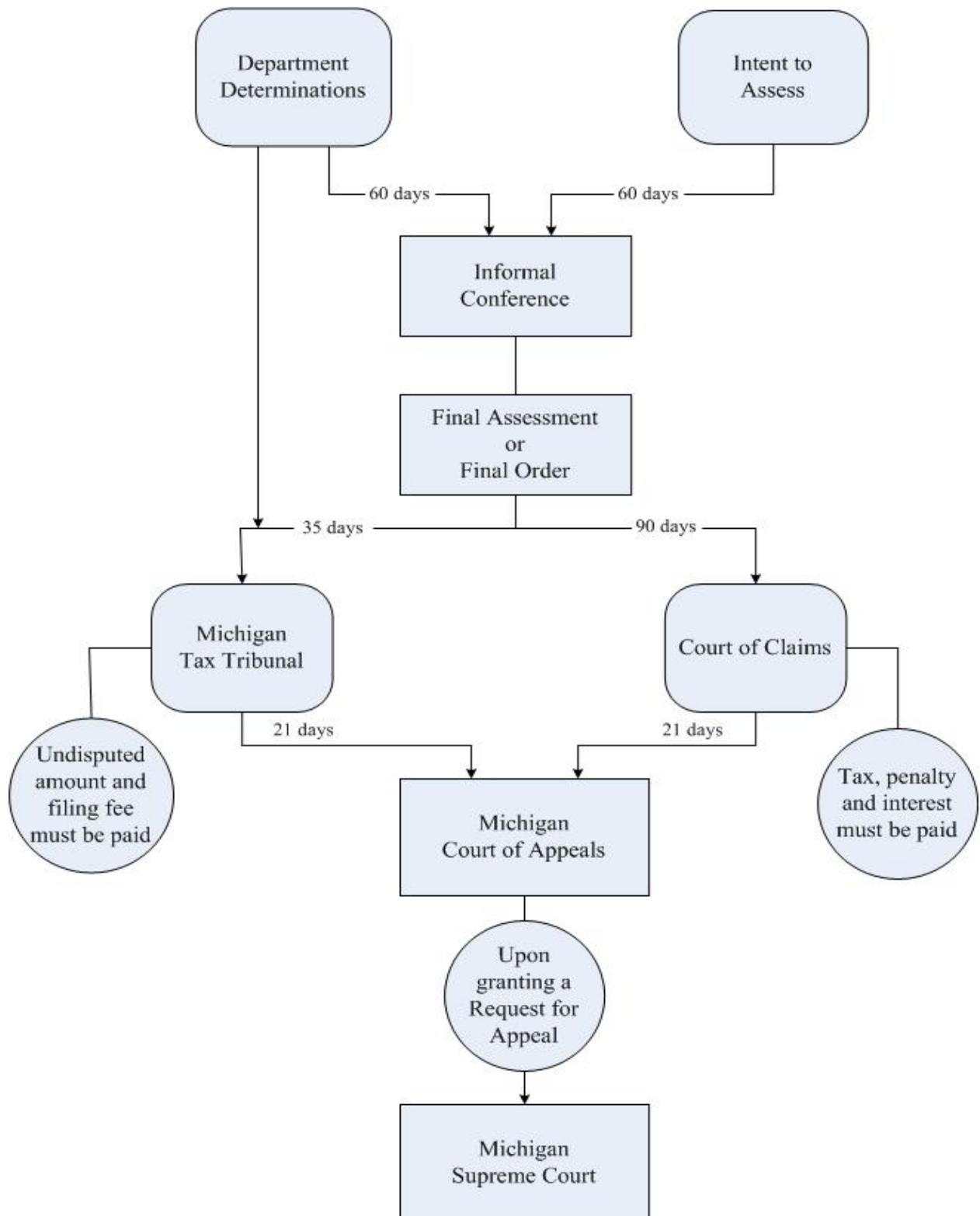
### **Michigan Tax Tribunal**

Taxpayers may choose to appeal directly to the Tax Tribunal within 35 days of receiving a notice of reduced or denied refund, a notice of reduced or denied credit forward, or a BILL FOR TAXES DUE (FINAL ASSESSMENT) instead of requesting an informal conference. The Tax Tribunal will send the taxpayer information, including filing fee requirements which must be paid when the appeal is filed. Any portion of the tax, penalty, or interest due which is not being disputed must be paid prior to Tax Tribunal review. A taxpayer may represent himself or herself or have an authorized representative attend the hearing. The taxpayer and the Department have the right to appeal Tax Tribunal decisions to the Court of Appeals within 21 days after the Tax Tribunal decision.

### **Court of Claims**

As provided under Section 22 of the Revenue Act, taxpayers may choose to appeal directly to the Court of Claims (Ingham County Circuit Court) within 90 days of receiving a notice of reduced or denied refund, a notice of reduced or denied credit forward, or a BILL FOR TAXES DUE (FINAL ASSESSMENT). Appeals to the Court of Claims require payment of the full amount of a BILL FOR TAXES DUE (FINAL ASSESSMENT). See page 7 for a graphic depiction of this process.

**MICHIGAN DEPARTMENT OF TREASURY  
REVENUE ACT  
APPEAL PROCEDURE**



## PENALTY AND INTEREST CHARGES AND WAIVERS

### Interest

Interest must be paid on additional tax owed or tax paid late. Interest is computed from the due date of the return through the date of payment. The current interest rate for taxes due is determined each July 1 and January 1, and equals 1 percent above the adjusted prime rate. Interest is charged on the unpaid balance of tax due.

### Penalties

Below is a chart of the various penalties and the reason they are assessed.

<u>Reason for Bill</u>	<u>Penalty Charges</u>
Failure to file or pay tax	5% if not more than 2 months. Additional 5% per month or part of month, to maximum 25%. Minimum \$10. Interest applies.
Negligence	10% of tax. Minimum \$10. Interest applies.
Intentional disregard	25% of tax. Minimum \$25. Interest applies.
Fraudulent evasion of tax	100% of tax. Interest applies.
Non-negotiable remittance (“bad check”)	\$50.
Frivolous protest of tax due	25% of tax. Minimum \$25.
Failure to file information return or report	\$10 each day, to maximum \$400 each return.
Violation of Tobacco Products Tax Act (possession of unstamped cigarettes or unlicensed reseller)	500% of tax. Interest applies.

In some cases, more than one penalty will be applied based on the circumstances. Taxes due based on an audit of the taxpayer’s records may have a 10 percent negligence, 25 percent intentional disregard, or 100 percent fraud penalty applied. In addition, the failure to pay penalty (5 percent per month/25 percent maximum) will be applied to the unpaid balance of taxes due from an audit 30 days after the issuance of a NOTICE OF INTENT TO ASSESS resulting from the audit.

## **Penalty Waivers**

A taxpayer requesting a waiver of penalty on a BILL FOR TAXES DUE (FINAL ASSESSMENT) must do so in writing to:

Collection Division  
Michigan Department of Treasury  
P.O. Box 30168  
Lansing, MI 48909

A taxpayer must explain the reason(s) for late payment of tax. If the taxpayer establishes reasonable cause, the Department will waive the penalty charge.

Examples that are illustrative, but not conclusive, in showing reasonable cause include:

1. Failure to file or pay taxes is caused by the death or serious illness of the taxpayer responsible for filing.
2. Failure to file or pay taxes is caused by the destruction of the taxpayer's records or the taxpayer's business by fire or other casualty.
3. Failure to file or pay taxes is caused by the prolonged unavoidable absence of the taxpayer responsible for filing and the taxpayer is precluded, due to circumstances beyond the taxpayer's control, from making alternate arrangements for filing or paying.
4. Showing that the delay or failure is caused by erroneous written information that has been given to the taxpayer by an employee of the Department.

## **Interest Waivers**

Interest is charged for the use of money and is not subject to waiver except in rare instances.

# **SECTION 2 - EMPLOYEE/TAXPAYER GUIDELINES**

## **EMPLOYEE RESPONSES TO TAXPAYER INQUIRIES**

The Department's purpose is to apply the law consistently and fairly to all taxpayers and to collect only the actual amount due under the law.

### **Courtesy and Consideration**

The Department's goal is to ensure that taxpayer rights are protected so taxpayers will have the highest confidence in the integrity, efficiency, and fairness of the State of Michigan's tax system.

Department employees/representatives shall give taxpayers prompt, fair, and courteous service.

Employees and representatives acting on behalf of the Department are expected to:

1. Respond to taxpayer inquiries, written and verbal, in a prompt, fair, courteous, and professional manner.
2. Respond to taxpayer inquiries or direct taxpayers to the most appropriate information source available. In all cases, employees/representatives will maintain a pleasant voice, be courteous and professional, and provide the best service available to taxpayers.
3. Respond to written inquiries according to established policies which determine priority given to written correspondence and letter content. Written responses shall be accurate, professionally written, non-threatening, and contain a Department contact and telephone number.

Department employees/representatives are specifically prohibited from:

1. Discussing any account with anyone other than the taxpayer of record or the taxpayer's authorized representative.
2. Using inappropriate language in any conversation with a taxpayer. Racist, sexist, or vulgar language is never appropriate.
3. Speaking in a hostile tone of voice or shouting at a taxpayer.
4. Threatening a taxpayer and/or the taxpayer's family.

It is the responsibility of each supervisor to monitor the behavior of employees/representatives on the telephone and to review outgoing correspondence for compliance.

## **TAXPAYER RIGHTS AND RESPONSIBILITIES**

The Department has a system for monitoring compliance with the standards of fair and courteous treatment of the public which includes, but is not limited to, the ability of aggrieved persons to complain to the immediate supervisor of the individual who acts improperly, the ability of the Department to discipline that person who acts improperly, and the ability of the Taxpayer Advocate to respond to complaints from the public.

### **Privacy and Confidentiality**

Taxpayers have the right to privacy; therefore, Department employees/representatives shall maintain the confidentiality of taxpayer information. Taxpayers have the right to know why the Department is asking them for information, how the information will be used, and what might happen if they do not provide the information. Taxpayers have the right to file a complaint against Department employees/representatives who make unauthorized disclosures of confidential tax information.

Under the law, the Department may share a taxpayer's tax information with the Internal Revenue Service, tax agencies for other states, and local units of government within Michigan with whom the Department has information exchange agreements. Exchange with these agencies is performed under strict legal guidelines.

### **Taxpayer Information and Help**

Taxpayers have the right to information and help in complying with tax laws. In addition to the basic instructions that are provided with the tax forms, the Department makes other information available online at *www.michigan.gov/treasury* or by phone at (517) 636-4486.

Taxpayers experiencing difficulty in resolving tax matters can contact the Taxpayer Advocate Office by writing to:

Taxpayer Advocate Office  
Michigan Department of Treasury  
Lansing, MI 48922

If the tax problem is causing or will cause the taxpayer significant hardship, the Taxpayer Advocate will arrange for immediate review of the problem. While the case is under review, the Collection Division will take no further action.

### **Taxpayer Responsibilities**

Taxpayers are responsible for filing their tax returns on time, with correct payments when required, and for ensuring that their returns are correct, no matter who prepares them.

Taxpayers shall keep accurate and complete records necessary for the proper determination of tax liability.

### **Taxpayer Contact**

If a taxpayer's tax return is selected for review, the reviewer may need to verify some information with the taxpayer. This is usually handled through correspondence or by telephone. The taxpayer should provide the Department with whatever tax information is required to complete the review of the taxpayer's return as quickly and as efficiently as possible.

### **Audit**

If a taxpayer is selected for audit, in most cases an auditor will conduct the audit at the taxpayer's place of business. In tax audit situations, taxpayers have the right to:

1. Ask that the audit take place at a reasonable time in a convenient location.
2. Represent themselves, have other persons accompany them, or have other persons represent them in their absence with proper authorization.
3. Ask for and receive copies of the audit workpapers that show how the auditor determined changes to their taxes, if any.

4. Meet with the auditor to discuss audit determinations and related reports.
5. Meet with the audit supervisor to discuss disagreements with changes made to their taxes, if any.
6. Notice of a refund opportunity in a timely manner if, during the course of an audit, the auditor identifies a refund opportunity. The taxpayer may then claim that refund under the Revenue Act. Neither the auditor nor the Department is required to provide detailed transactional support for refund claims or to perform any review beyond that necessary to satisfy the intended scope of the audit.
7. Offset credit amounts against debit amounts determined in an audit. Furthermore, a taxpayer subject to a use tax audit of purchases may offset the use tax liability determined in the audit by the sales tax paid annually to Michigan vendors in error or the use tax paid annually to vendors outside Michigan in error on an amount up to \$5,000 in purchases.
8. Notice of the amount of any refund the Department believes is owed the taxpayer as a result of an audit. The notice must inform the taxpayer of any appeal rights.

## **EMPLOYEE CONDUCT**

### **State Ethics Act**

The State Ethics Act (PA 196 of 1973, as amended) contains guidelines for ethical conduct by public officers or employees. Under the Act, it is unethical for Department employees/representatives to:

1. Divulge confidential information to unauthorized persons prior to its authorized release to the public.
2. Represent his or her personal opinion as that of the Department.
3. Use State resources, property, and funds for personal gain or benefit.
4. Solicit or accept a gift or loan of money, goods, services, or other item or service of value for personal gain or benefit.
5. Engage in a business transaction for personal gain or benefit.
6. Engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with official duties or affects the person's judgment or action in performing his or her duties.
7. Participate in the negotiation or execution of contracts, make loans, grant subsidies, fix rates, issue permits or certificates, or other regulation or supervision relating to a business entity where there is a financial or personal interest.

## **Civil Service Rules and Treasury Policies and Procedures**

Department employees/representatives must comply with Civil Service Rules and Department policies and procedures regarding confidential information, conflict of interest, employee conduct, supplemental employment, and any other ethics- and/or conduct-related policies and procedures. Below are general guidelines that employees/representatives must follow.

### **Fairness and Impartiality**

Individuals must treat taxpayers, their employees, and their representatives in a professional manner. Audit plans and actions must be fair and impartial.

### **Dealing With Hostile Taxpayers**

Taxpayers may appear hostile or take on an adversarial position because they feel intimidated by the presence of an auditor or collector. Employees/representatives are to show respect and courtesy to taxpayers at all times even though the same respect and courtesy may not be returned. Employees/representatives should not engage in arguments with taxpayers.

Taxpayers do not have the right to be abusive with employees/representatives. If a taxpayer uses abusive language or attempts to intimidate or otherwise threaten an employee/representative, the taxpayer will be informed that his or her words or actions are abusive and/or offensive and the taxpayer's abusive conduct must cease. If the taxpayer continues to be abusive, the employee/representative must inform the taxpayer that his or her business will be completed at a later date. The employee/representative will inform the supervisor of the abusive conduct and any threats to or assaults on the individual.

Under no circumstances should Department employees/representatives remain in an abusive or hostile environment or carry weapons. When necessary, security escorts will be used.

### **Disclosing Confidential Tax Information**

Taxpayer returns and any related tax information obtained in the processing of tax returns will not be disclosed to unauthorized persons.

The Department may take disciplinary action and/or seek felony charges against any current or former employees or authorized representatives who make unauthorized disclosures. If an employee or authorized representative is found to be criminally liable, he or she may face a maximum penalty of five years in prison, a fine of not more than \$5,000, and automatic dismissal from employment.

Under the Revenue Act, it is illegal for employees/representatives to make improper disclosures to any unauthorized individual, including:

1. An unauthorized employee
2. An unauthorized family member
3. An unauthorized representative
4. The taxpayer's competitor.

It also is improper for employees/representatives to disclose confidential Department policies and procedures to any unauthorized individual regarding:

1. Audit selection and collection criteria
2. Internal verification codes
3. Treasury employee's address, telephone number, or other personal information
4. Confidential communications
5. Processing criteria.

Confidential tax information is protected from subpoena if the court order is for a non-tax matter. Disclosures can be made if disclosure is: (1) required for the proper administration of a tax law, (2) pursuant to judicial order sought by agency charged with the duty of enforcing or investigating support obligations, or (3) pursuant to a judicial order sought by any government agency charged with the responsibility for administering or enforcing criminal law.

### **Social Security Numbers**

The Federal Privacy Act of 1974 and the Federal Tax Reform Act of 1976 specifically allow the Department to use Social Security numbers (SSNs) in the administration of Michigan tax statutes. Although the use of SSNs is allowed by federal law, the disclosure of SSNs and other personal information is regulated by Michigan's Revenue Act, Identity Theft Protection Act, and Social Security Number Privacy Act.

The Revenue Act provides specific penalties for the release of taxpayer information, including SSNs. The disclosure rules are discussed in detail in the preceding "Disclosing Confidential Tax Information" section.

The Identity Theft Protection Act, as amended by PA 566 of 2006, requires the Department to give Michigan residents notice when their personal information has been accessed by an unauthorized person that may result in substantial loss, injury, or identity theft.

If a taxpayer's SSN or other personal information has been accessed without authorization, the Department will send written notice by a variety of means including United States Postal Service mail, electronic mail (e-mail), or telephone. E-mail may be used provided account information and/or account numbers are not included in the e-mail. If notice is by telephone, the Department cannot leave a recorded message.

If the cost of providing notice exceeds \$250,000 or the Department has to provide notice to more than 500,000 Michigan residents, the Department may provide substitute notice by doing **all** of the following:

- Sending an e-mail notice to Michigan's residents for whom the Department has e-mail addresses.
- Conspicuously posting the notice on the Department Web site.
- Notifying major statewide media supplying a telephone number or a Web site address that provides additional assistance and information.

The notice will include a description of the type of personal information that was accessed without authorization. The Department will explain what has been done to protect data from further security breaches. The notice will provide a telephone number for assistance or additional information. Finally, the notice will remind taxpayers of the need to remain vigilant for incidents of fraud and identify theft.

If the Department knowingly fails to provide any notice of a security breach, it may be subject to a fine of not more than \$250 for each failure to provide notice. The aggregate liability for civil fines for multiple violations that arise from the same security breach shall not exceed \$750,000.

This section does not apply to the access or acquisition by a person or agency of federal, state, or local government records or documents lawfully made available to the general public.

### **Unbecoming Conduct**

Employees/representatives are subject to public scrutiny on the job and during off-hours. The conduct of auditors and collectors should always be ethical. The credibility of an auditor or collector, and ultimately the Department, may be damaged by the **appearance of impropriety**, as well as **actual** impropriety by the individual.

Unbecoming conduct by Department employees/representatives could seriously damage their ability to do their jobs effectively and includes the following:

1. The solicitation/acceptance of gifts, loans, services, or any other item of value.
2. Using inappropriate or illegal drugs, including alcohol and other intoxicants.
3. Exercising improper care or use of vehicles on official State business.
4. Using offensive language or gestures.

### **Conflict of Interest**

Employees/representatives are prohibited from participating in any outside business-related transactions or from divulging confidential information to unauthorized persons for personal financial gain (or financial gain for a member of the employee's immediate family) which is in any way connected to an employee's/representative's official State duties and/or access to confidential information.

Employees/representatives are specifically prohibited from:

1. Divulging or releasing, for personal financial gain or financial gain for a member of an employee's/representative's immediate family, any confidential information which is not by law, rule, regulation, or court order available to the general public.
2. Engaging in any business transaction or private arrangement for personal financial gain or financial gain for a member of an employee's/representative's immediate family, which is based on the employee's/representative's position or the employee's/representative's access to confidential information.

3. Soliciting, accepting, or agreeing to accept anything of value under any circumstances which could reasonably be expected to influence the manner in which an employee/representative performs work or makes decisions.
4. Granting or making available to any person any consideration, treatment, advantage, or favor beyond general practices for similar circumstances.
5. Representing or acting as agent for any private interests, whether for compensation or otherwise, in any transaction in which the State has a direct and substantial interest and which could reasonably be expected to result in a conflict between the private interests of the employee/representative and the employee's/representative's official State responsibilities.
6. Having any substantial interest in any business or industry where the employee/representative, in a significant decision-making capacity, participates on behalf of the State in the regulation, enforcement, auditing, licensing, or purchasing of any goods or services.

### **Disclosing Conflict of Interest**

All State employees/representatives must disclose to their Personnel Officer all personal or financial interests and the interests of members of their immediate families in any business or entity with which they have direct contact while performing official duties. This includes auditors who audit financial records of businesses or individuals and their supervisors.

### **Supplemental Employment**

Outside employment is permitted only when such employment does not in any way conflict with the individual's work hours or State employment or in quantity or interest conflict in any way with satisfactory and impartial performance of duties. Prior written approval must be obtained from the division administrator and the Personnel Officer before employees/representatives engage in any outside employment. Employees must notify their division administrator and Personnel Officer of any contemplated changes in outside employment.

Employee/representative requests for supplemental employment will be reviewed on a case-by-case basis. Because of the highly sensitive and confidential nature of the auditor's or collector's position, duties, and work, supplemental employment will only be approved when there is clearly **no** conflict or adverse affect on the auditor's or collector's duties with the Department.

### **Following Departmental Policies and Procedures**

Employees/representatives should observe applicable laws and Departmental policies and procedures in their daily interactions with others.

The use of an audit or collection dollar goal or quota for evaluating an employee/representative of the Department is expressly prohibited.

The Department, through its designated management team, will develop and administer appropriate standards for evaluating performance.

## **SECTION 3 - AUDIT GUIDELINES**

### **TAX AUDITS**

#### **Legal Authority**

Authority to conduct audits for the taxes administered by the Department is provided for in PA 122 of 1941, Section 3(a), as amended, being section 205.3a of the Michigan Compiled Laws.

#### **Purpose**

The purpose of tax audits is to determine if taxpayer returns have been prepared and filed correctly. This usually involves an examination conducted at the taxpayer's place of business. During the examination process, the auditor reviews the facts, circumstances, records and other pertinent information that support the taxpayer's return. The audit work may take as little as a few days or longer, depending on the complexity of the audit situation (e.g., size of business, diversity of operations, etc.). Ultimately, the auditor makes a final determination that the taxpayer's return is:

1. Filed correctly (no changes).
2. Overpaid (taxpayer is entitled to a credit).
3. Underpaid (taxpayer owes additional tax).

#### **Scope**

The specific scope of taxpayer audits is dependent on several factors:

1. Tax involved (type and number)
2. Records (complexity, quality, location, and availability)
3. Taxpayer type (individual, proprietorship, corporation, etc.)
4. Type of business.

#### **Audit Selection**

It is not possible to audit all of the taxpayers in Michigan with the limited resources that are available. Instead, computer-generated risk assessment models are used to evaluate taxpayers for audit.

#### **General Procedure for Audit Assignments**

Taxpayers selected for audit may receive a Pre-Audit Confirmation Letter with an accompanying Tax Audit questionnaire to be completed. The questionnaire will assist the auditor in understanding the business activities of the taxpayer which, in turn, can minimize the time needed to complete the audit. A response date for returning the questionnaire is identified in the letter. The auditor will telephone the taxpayer within two weeks of receiving the completed questionnaire to establish a start date for the audit and identify pertinent records needed to complete the audit.

In some cases, the auditor may request that copies of certain records be mailed by the taxpayer in advance of the audit start date. This will expedite the completion of the audit.

Immediately following the telephone conversation with the taxpayer, an Audit Confirmation Letter is sent which identifies the audit periods, the tax or taxes subject to audit, an itemization of records the taxpayer must provide, and the initial audit appointment date.

### **Performing the Audit**

In every instance, the auditor assigned to the audit will conduct a fair and impartial examination of the taxpayer's records.

Auditors shall keep the work hours as established by the taxpayer, shall limit lunchtime to not more than one hour, and shall leave the taxpayer's premises at the established time.

Auditors shall respect the taxpayer's property, rules, business practices, and hours and shall obtain permission to use the taxpayer's equipment, such as the telephone or copy machine.

The auditor will keep the taxpayer informed of the progress of the audit; discuss procedures, appropriate sampling methods, and audit tests being performed; and will answer any related questions that may arise. In addition, the auditor will review the taxpayer's internal controls to ensure adequate controls exist to accurately accrue and report the proper tax liability.

During the course of the audit, the auditor must adhere to the following provisions of the Jobs Provider Bill of Rights of 2006:

1. Notify the taxpayer in writing of any refund opportunity the auditor may have identified. The taxpayer may then claim that refund under the provisions of the Revenue Act. Neither the auditor nor the Department is required to provide detailed transactional support for refund claims or to perform any review beyond that necessary to satisfy the intended scope of the audit.
2. Offset credit amounts against debit amounts determined in an audit. A taxpayer subject to a Use tax audit of purchases may offset the Use tax liability determined in the audit by the Sales tax paid annually to Michigan vendors in error or the Use tax paid annually to vendors outside Michigan in error on an amount up to \$5,000 in purchases.
3. Give notice of the amount of any refund the Department believes is owed the taxpayer as a result of an audit. The notice must inform the taxpayer of any appeal rights.

When the audit is finished, the auditor will present the audit findings to the taxpayer or the taxpayer's representative. The auditor will explain the audit findings. If the taxpayer owes tax and agrees with all or part of the audit determination, the auditor will accept full payment of the undisputed portion of the determination.

If the taxpayer disagrees with the audit findings, the taxpayer has the right to discuss the areas of disagreement with the auditor, auditor's supervisor, or area manager. The taxpayer has the right to appeal all or part of the audit determination. See Section 1, "Appeals Process."

The taxpayer is provided with the auditor's telephone number and the name and telephone numbers of the auditor's immediate supervisor and area manager. Taxpayers are encouraged to contact the supervisor or manager if they have concerns or problems associated with the audit or the auditor.

### **Audit Review**

The tax audit is subject to two levels of review by the auditor's immediate supervisor and area manager. If there are errors, omissions, or oversights identified in the review process, the auditor will immediately notify the taxpayer of the changes and provide copies of the work papers that reflect changes made during the review process.

## **TAXPAYER PREPARATION FOR THE AUDIT**

This section is written for the taxpayer who is being audited. It is intended to help the taxpayer have a positive and successful audit experience.

### **Be Knowledgeable**

Be aware of specific taxes, rules, and regulations that apply to the situation. This is a key to peace of mind when the tax auditor calls. Taxpayers need to be aware of what the statutes require and what must be done to comply.

### **Be Prepared**

Understanding the scope of the audit will help the taxpayer prepare and will help reduce the time needed for the audit. Taxpayers may want to discuss the following items with the auditor when first contacted about the audit:

1. Taxes covered in the audit
2. Timeframe or period covered by the audit
3. Records needed during the audit
4. Date the audit work begins
5. Expected length of time for the audit work.

Once those questions are answered, the taxpayer can:

1. Gather the necessary records.
2. Find a location readily available to the taxpayer and the auditor.
3. Provide the auditor with a suitable workspace.

In turn, the auditor will ask the taxpayer:

1. How the business operates?
2. Who is responsible for gathering tax information?
3. Who is responsible for recording tax information?
4. Who makes the business and tax-related decisions?
5. What criteria are used to validate tax-exempt transactions?
6. What is the method of accounting?
7. What internal controls exist within the accounting and tax system?

If the taxpayer can answer these questions and provide the necessary supporting documentation, it will reduce the time it takes to perform the audit.

### **Post Audit**

Taxpayers and their representatives must review the audit determination with the auditor. Corrective action should be taken as soon as possible to guarantee proper reporting in future periods. If the taxpayer does not understand the audit determination or does not implement effective remedies, he or she may be subject to penalties in subsequent audits.

## **SECTION 4 - COLLECTION GUIDELINES**

### **COLLECTION ACTIONS**

#### **Introduction**

The Collection Division will not take any collection actions (e.g., record a lien, seize property or wages, etc.) until appropriate notice and due process have been provided.

Taxpayers can stop the collection process at any stage by paying the assessed balance due in full. However, once a tax account has reached the collection stage, the Collection Division may take action to secure payment. Interest and/or penalty will apply as long as there is a tax balance due.

Taxpayers should make every effort to pay their bills in full as soon as possible to minimize penalty and interest. Taxpayers unable to make full payment, borrow the amount due, or who do not have sufficient disposable assets from which full payment could be made should pay as much as he or she can and immediately contact the Collection Division to request payment arrangements for the balance. The Collection Division may ask for a complete financial statement from the taxpayer to determine appropriate payment arrangements.

The application of payment under a payment agreement is at the sole discretion of the Department. Payments are applied to interest first, then to penalty, and finally to tax due. Refunds and/or other monies owed to the taxpayer by the State will be intercepted and applied to taxpayer debts.

## **Liens**

The Collection Division will file liens on Real and Personal property to protect the State's interest as a creditor. Liens will be filed even when a taxpayer has made payment arrangements and is current with all payments.

**Caution!** Once a lien is filed, the taxpayer's credit rating could be harmed and, in most cases, property cannot be sold or transferred until the past-due tax is paid. A lien filed at a county Register of Deeds becomes a public record. Credit reporting agencies may obtain and publish the lien information. A lien filed against an individual or business that is picked up by a credit reporting agency will remain a part of that credit history for the next seven to ten years.

Prospective credit lenders may require the release of liens before extending a loan. If a taxpayer wishes to sell property, the taxpayer should contact the Collection Division to discuss the lien.

## **Wage Levies**

The Department may levy against a taxpayer's wages, salaries, bonuses, commissions, and other compensation from an employer. A wage levy requires an employer to deduct a specified amount from the taxpayer's compensation to pay the past-due debt. Notification is provided to the taxpayer of the amount owed at least ten days before a wage levy is sent to an employer. The employer must continue to deduct the specified amount from the taxpayer's net wages until the amount of the levy is paid or the Department notifies the employer that the taxpayer has been released from further payment. An additional fee (warrant costs) in the amount of \$55 is added to the delinquent amount due for each levy served.

## **Financial Institution Levies**

The Department may serve a levy against the taxpayer's financial institution (banks, credit unions, brokerage firms, etc.) which requires the financial institution to send any funds being held to the Department up to the total past due tax, penalty, and interest amount. The taxpayer will be notified of the amount owed at least ten days before a levy is sent to the financial institution. An additional fee (warrant costs) in the amount of \$55 is added to the delinquent amount due for each levy served.

Employers or financial institutions that fail to comply with requirements when served with a Warrant Notice of Levy will be held liable for an amount equal to the indebtedness of the taxpayer.

## **Lien and Levy Releases**

If a lien is placed and the debt for which it was placed is satisfied, the Collection Division must release the lien within 20 business days. If the lien was placed improperly, the Collection Division must withdraw the lien within five business days.

If a liability for which a levy has been placed is satisfied, the Collection Division must release the levy within ten business days. If the levy was placed improperly, the Collection Division must withdraw the levy within five business days.

If a lien has been placed improperly, the Collection Division will issue a CERTIFICATE OF WITHDRAWAL OF STATE TAX LIEN to remove the lien from the records of the Register of Deeds and/or Department of State, Uniform Commercial Code Section. Also, if a person is required to pay a fee to the Department, a bank, or other financial institution as the result of an erroneous recording or filing of a lien, or an erroneous issuance and service of a WARRANT or WARRANT-NOTICE OF LEVY, the Department will reimburse fees to that person upon written request with proper documentation.

If a tax lien attaches to the wrong person or innocent third party, the Collection Division can issue a CERTIFICATE OF NON-ATTACHMENT. The certificate is issued only after the Collection Division has reviewed the evidence and determined that the requester is in fact not the assessed taxpayer.

The Collection Division can issue a SPECIFIC RELEASE OF LIEN to release tax liens on specific property or entities which have outstanding tax assessments. In the case of the taxpayer selling real estate, the requester must provide proof of senior recorded interests in the property to be sold, the balance due on each recorded interest, and the distribution of proceeds from the real estate sale to the Department.

### **Tax Warrants (Seizure of Business and Personal Property)**

The Department has the authority to issue a Tax Warrant to close a business and/or to seize and sell the taxpayer's personal property (such as business vehicles, business assets, equipment, and inventory). The money from the sale of the business assets will be applied to the tax debt. Notification is provided to the taxpayer of the amount owed at least ten days before the property is seized. Most seized property cannot be sold by the Department for at least ten days (perishable items may be sold within 24 hours). Seizure-related expenses (such as State personnel costs, a locksmith service, towing company assistance, storage facility costs, advertising, and mailing costs) will be charged to the taxpayer.

The Department has the authority to take immediate action against the taxpayer. This action can freeze taxpayer assets and limit the taxpayer's ability to sell property.

### **Properties Exempt From Levy**

If Collection Division representatives must seize (levy on) property, the taxpayer has the legal right to keep the following assets:

1. A reasonable amount of personal belongings, clothing, furniture, and business or professional books and tools
2. Unemployment, workers' compensation, and certain pension benefits
3. Court-ordered child support payments
4. Mail
5. A predetermined amount of wages, salaries, and other income (\$75 exemption per week, plus \$25 for each legal dependent).

If at any time during the collection process a taxpayer does not agree with the collection representative, the taxpayer can discuss his or her case with the collection supervisor.

### **Corporate Officer Liability**

The Revenue Act provides the Department the authority to hold officers, members, managers, and/or partners of a corporation, limited liability company, limited liability partnership, limited partnership, or a partnership personally liable for the unpaid taxes and any related penalties and interest. Refer to Section 1 of this Handbook for the Tax Billing and Appeals Process.

### **Successor Liability**

If a taxpayer purchases an active or closed business (including stock of goods or even the transfer of a liquor license), the purchaser may be held liable as a successor for the unpaid taxes. A purchaser may avoid the possible liability at the time of the purchase by requiring the seller to provide a TAX CLEARANCE CERTIFICATE from the Collection Division stating that no taxes are due. Otherwise, the purchaser must set aside (escrow) sufficient money to pay the taxes, interest, and penalties owed by the seller. The purchaser's liability for the seller's tax debts is limited to the fair market value of the business or assets less the sale proceeds applied to debts for which there is a superior secured interest. Refer to Section 1 of this Handbook for the Tax Billing and Appeals Process.

## **SECTION 5 - RESOURCES**

For information, forms, and available online services, visit [www.michigan.gov/taxes](http://www.michigan.gov/taxes).

For questions about tax debts that have been assessed, contact the Collection Division.

Taxpayers who have additional questions should contact the appropriate tax unit at the number below.

Collection Division	(517) 636-5265
Individual Taxes	(517) 636-4486
Michigan Business Tax	(517) 636-4557
Motor Fuel Taxes	(517) 636-4600
Sales, Use, and Withholding Taxes	(517) 636-4730
Single Business Tax	(517) 636-4700

Taxpayers experiencing difficulty in resolving tax matters may contact the Taxpayer Advocate Office by writing to:

Taxpayer Advocate Office  
Michigan Department of Treasury  
Lansing, MI 48922